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# The Fragile Power of Political Nations: Adam Smith’s Federative

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*This article examines Adam Smith’s concept of the federative: the double-facing constitutional power to conduct international relations today called the treaty or foreign-affairs power. We reconstruct Smith’s account of the federative from his major and minor works and demonstrate its importance in his account of law and empire. We first examine Smith’s early “internal federative,” where the power grows from the internal constitutional organization of the state. What starts as a democratic right to wage war and make peace becomes concentrated over time in the sovereign and its advisers as a “senatorial” power. We then turn to the “external federative” in Smith’s later works, where the federative is redesigned as a power to unify colonial legislative bodies, connecting the familial sentiments of Britain and America, and forming a model for moving, slowly, towards the conditions Smith deemed necessary for international justice.*

This article examines Adam Smith’s concept of the federative: the double-facing constitutional power to conduct international relations. Today, various constitutional systems call this the “treaty” or “foreign-affairs” power, held by the executive and (supposedly) checked or monitored by the parliament, with the latter ultimately responsible for converting treaty obligations into domestic law. While sovereign and prerogative powers have long been a mainstay of the history of political and legal thought, the federative has, until lately, been largely ignored. As part of a general tendency to give more prominence to both law and the international within intellectual history,<sup>1</sup> recent work has examined the federative in its connection to law and empire, for example John Locke’s invocation of “federative

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<sup>1</sup>See e.g. Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton, 2023); Lisa Ford, *The King’s Peace: Law and Order in the British Empire* (Cambridge, MA, 2021); Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law* (Cambridge, MA, 2016); David Armitage, “The International Turn in Intellectual History,” in Darrin M. McMahon and Samuel Moyn, eds., *Rethinking Modern European Intellectual History* (New York, 2014), 232–52.

power” and the constitutive role of “federation” in John Stuart Mill’s account of empire.<sup>2</sup>

We focus here on Adam Smith’s use and adaptation of the federative, which has been largely overlooked. This article reconstructs Smith’s account of the federative through his major and minor texts to demonstrate its importance in understanding his analysis and critique of law and empire. By its nature, federative power is double-faceted, being an internal constitutional capacity that connects outwards into the world beyond the state. Smith’s federative arises, we argue, from two sources, the first being his instinct that commerce, in the broad sense of social and cultural as well as economic interaction, can be beneficial for people and peoples alike, and the second his pronounced antagonism towards empire as a regressive form of political association. Operating as part of a system of public justice central to the well-ordered modern state, the federative emerges from Smith’s account as an alternative model for interstate relations, offering an escape from the beggar-thy-neighbor politics which characterized European interstate competition and the imperial “arts of oppression” that these engendered.<sup>3</sup>

In using the federative as a lens through which to examine the development and makeup of modern constitutional orders and the integration of those constitutions within larger frameworks of international law and justice, Smith inhabited a well-established intellectual tradition. John Locke, working out from Ciceronian sources, identified a novel distinction between legislative, executive, federative and also prerogative power. Whereas the latter was conceived as a discretionary power vested in the executive to respond to pressing internal needs, notably public emergencies—and distinguished, as such, from “ordinary” executive power—Locke coined the term “federative,” from the Latin *foedus/foedera*, meaning agreement, treaty or pact, to describe what he saw as the functionally distinct constitutional capacity containing “the Power of War and Peace, Leagues and Alliances, and all the Transactions, with all Persons and Communities without the Commonwealth.”<sup>4</sup> Though its operation must, by its nature, be left largely to “the Prudence and Wisdom of those whose hands it is in,” Locke had no doubt that its exercise was subject to legislative oversight on roughly the same lines as “ordinary” executive power.<sup>5</sup> The introduction of the federative did not only provide a more finely grained analysis of constitutional ordering. It also enabled Locke to suggest at least the possibility of a world patterned by well-ordered commonwealths on the basis of agreement and comity rather than the starkness and injustice of brute force. The theological dimension of this worldview lies just beneath the surface. The cognate term “federal” is resonant of the divine covenant associated with the ideal of the Holy Commonwealth that

<sup>2</sup>See Thomas Poole, “The Script of Alliance: Locke on the Federative,” *History of Political Thought* 42 (2021), 683–704; Duncan Bell, “John Stuart Mill on Federation, Civilization, and Empire,” *History of Political Thought* 45 (2024), 758–85.

<sup>3</sup>Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), ed. R. H. Campbell and Andrew S. Skinner (Indianapolis, 1981) Bk IV, Ch. 7, b.4.

<sup>4</sup>John Locke, *Two Treatises of Government* (1689), ed. Richard Tuck (Cambridge, 1988) Bk 2, Ch. 12, s 146.

<sup>5</sup>*Ibid.*, s 147.

had previously inflected James Harrington's messianic republicanism, John Selden's Hebraic natural-law jurisprudence and Thomas Hobbes's reflections on the Christian Commonwealth.<sup>6</sup>

The other preeminent figure within this federative tradition after Locke is Montesquieu, whose "profound influence on the Scottish Enlightenment" is well attested.<sup>7</sup> Montesquieu's own taxonomy of constitutional powers in *The Spirit of the Laws* involved distinguishing between legislative power, "executive power over the things depending on the right of nations" (i.e. Lockean federative power) and "executive power over the things depending on the civil right" (Lockean ordinary or domestic executive power).<sup>8</sup> But what attracted Smith and his fellow Scots to Montesquieu was the way he sought to make connections between institutional arrangements and the deeper tissue or underlying logics of various forms of association. In this regard, Montesquieu explicitly identified "agreement" as the marker of a republic, arguing at one point that the "confederated state under a federal [i.e. treaty-based] constitution" might well represent the ideal combination of "the internal advantages of republican government and the external force of monarchy."<sup>9</sup>

The difficulties involved in identifying what Smith added to this federative tradition are not inconsiderable. He never managed to write his planned discourse on "the general principles of law and government" which may well have contained a more fully realized account of the subject.<sup>10</sup> This leaves us searching for material sourced from different manuscripts, one of which—the *Essays on Jurisprudence*—comes down to us through the hands of intermediaries, and in two different forms. More fundamentally, Smith is an especially subtle writer, and a key aspect of his thought is the recognition that ideas and institutions function as part of broader, more complex, social systems. This leads Smith to offer detailed, lengthy exegeses, often through historical accounts that rely heavily on conjectural narratives, and which reappear throughout his texts in different forms. Any stable conceptual propositions about what Smith thought at any one time thus emerge from an overarching "narrative of contingency and unintended consequences,"<sup>11</sup> combined with his "practical moralist" approach that sought to account for human sentiments and imperfections, and doubted philosophy's ability to change or eradicate them.<sup>12</sup>

<sup>6</sup>See James Harrington, *The Commonwealth of Oceana and A System of Politics* (1656), ed. J. G. A. Pocock (Cambridge, 1993) 105, 222, 231 ("confederates"); John Selden, *De Jure Naturali et Gentium, Juxta Disziplinam Ebraeorum Libri Septem* (London, 1665) 505 ("foedus"); Thomas Hobbes, *Leviathan* (1651), ed. Richard Tuck (Cambridge, 1998) Pt 1, Chs. xiii and xv, Pt 2, Ch. 30, s 25 ("confederates").

<sup>7</sup>Iain McDaniel, *Adam Ferguson in the Scottish Enlightenment: The Roman Past and Europe's Future* (Cambridge, MA, 2013), 13.

<sup>8</sup>Charles Louis Secondat, Baron de Montesquieu, *The Spirit of the Laws* (1748), ed. Anne Cohler, Basia Miller and Harold Stone (Cambridge, 1989) Part 2, Bk 11, Ch. 6, 156.

<sup>9</sup>*Ibid.*, Bk 9, Ch. 1, 131.

<sup>10</sup>Adam Smith, *The Theory of Moral Sentiments* (1759–90), ed. Knud Haakonssen (Cambridge, 2002) Bk VI, Part IV, s 37.

<sup>11</sup>David Lieberman, "Adam Smith on Justice, Rights, and Law," in Knud Haakonssen (ed.), *The Cambridge Companion to Adam Smith* (Cambridge, 2006), 214–45, at 233.

<sup>12</sup>Fonna Forman-Barzilai, *Adam Smith and the Circles of Sympathy: Cosmopolitanism and Moral Theory* (Cambridge, 2010), 129.

This sensibility brings with it not only a heightened sense of the fluidity and fragility of all things, especially all things political, but also an attentiveness to the dynamic interplay between the inside and outside of political and constitutional structures.

To bring the federative into focus, we replicate Smith's tendency to work across different registers, shifting between the general and the more particular, and from the analytical to what we might call the tentatively normative. We attempt a reconstruction of Smith's federative which acknowledges what he called at one point its "altogether precarious" nature.<sup>13</sup> The first part of this article focuses on the internal federative as it emerges from the *Lectures on Jurisprudence* and other early texts, where power grows from the internal constitution of the state. What starts as a democratic right to wage war and make peace becomes concentrated over time in the sovereign and its advisers as a "senatorial" power. This internal federative forms a lens through which Smith tells the story of the emergence of the modern separation of powers, particularly the relatively late evolution of the modern legislative power. The second half of the article turns to the external federative in Smith's later works. Here, the power's connection to the role of the legislature in war and peace is reconfigured as a power to unify colonial legislative bodies. That idea provides the germ of Smith's proposal in the *Wealth of Nations* for a federative union between Britain and America that could stave off a constitutional and imperial crisis. Ultimately, the federative connects the familial sentiments of Britain and America, forming a model for moving, slowly, towards the conditions that Smith deemed necessary for international justice.

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Smith first explicitly discusses the "federative" in his *Lectures on Jurisprudence*. In the first version we have of the *Lectures*, delivered in 1762–3 and reconstructed from student notes in the 1890s, Smith aims to specify the "rights which belong to a man as a member of community or society of men," and the forms of government, reducible to and distinguished by their arrangements of the holders of "the power of making laws and regulations, of trying causes or appointing judges, and of making peace or war." The part in which the federative first appears begins by directly invoking Locke and Montesquieu, the intention being to situate the concept within a broader separation-of-powers framework. "The third [power]," Smith writes, "which is the power of making peace or war, is called by Mr Locke the foederal power and by Baron Montesquieu the executive power, and I shall call it barely the *power of making peace or war*."<sup>14</sup> Smith identifies the federative as the "first part of the supreme power which is exercised in society."<sup>15</sup> From this definition, Smith moves to recount various histories of the federative, moving from a pre-governmental democratic power, to one exercised by a small council, to finally the modern constitutional form as exemplified by Great Britain.

<sup>13</sup> Adam Smith, *Lectures on Jurisprudence* (1762–3 and 1766), ed. R. L. Meek, D. D. Raphael and P. G. Stein (Indianapolis, 1982) LJ(A) Bk V, 104.

<sup>14</sup> *Ibid.*, Bk IV, 2, original emphasis.

<sup>15</sup> *Ibid.*, Bk V, 104.

### The “democraticall” power: the federative in the prehistory of government

In order to “acquire proper notions of government,” Smith thought it “necessary to consider the first form of it, and observe how the other forms arose out of it.”<sup>16</sup> Accordingly, to explain the federative, he embarks on a conjectural history which reconstructs a genealogy of the power and the governing relationships of which it forms a part. The approach required him to reach back, beyond the age of kings, to identify what is essential to the concept, at least as it presents at various stages in human development. And indeed, on Smith’s telling, the origins of the federative are democratic, not monarchical. Beginning at or before the advent of politics, he describes an “age of the hunters” (i.e. hunter-gatherers) where typically nomadic peoples existed without property and, as such, next to no government. In the later, 1766, version of the *Lectures*, Smith has these tribes living “according to the laws of nature”; that is, in a pre-political condition. In as much as government exists among these peoples, it consists very largely in this primitive, juridically near inchoate, expression of federative power, which Smith sees as the “earliest branch” of what would in time become the sovereign state.<sup>17</sup> This primordial federative power, still indistinct, is held collectively by the people and is “democraticall”: exercisable only if the consent of every individual is obtained, in the very rudimentary sense of each opting to fight or not.

From that semi-mythical point of origin, Smith shows how the concept of the federative slowly moved into focus as part of the gradual stratification and hardening of the governing apparatus in which it is housed. Smith is particularly acute when working at the intersection between juridical form and political sociology, showing himself especially careful not to concede too much too early to rulers who might at first sight seem to resemble the kings of a later age. While many governing regimes give the appearance of being monarchical in nature, often they are not really or are only incompletely so, especially so far as the location of the power over war and peace is concerned. It emerges that, for much of human history, outside the specific context of what Smith calls “military monarchies” such as Rome under the emperors,<sup>18</sup> the federative power tended to rest with people, even if sometimes only in an indirect or attenuated sense.

The “age of shepherds,” the stage after the hunter-gatherers, is a case in point. That period saw the inauguration of property—“the grand fund of all dispute”<sup>19</sup>—and with it significant social stratification and the first clearly recognizable government. Even here, however, with the rise of powerful tribal leaders and nomad warlords such as Genghis Khan, the location and specification of federative power was a more complex matter than one might imagine. For although “a state of this sort to a careless observer would appear to be monarchical,” Smith considers it at base democratic. The nature of war and the nature of politics inclined in that direction. The chieftain had to lead all his adult male (and sometimes much of the female) population into battle. But there was no administrative apparatus sufficient to enable him to

<sup>16</sup>Ibid., LJ(B) 19.

<sup>17</sup>Ibid., LJ(A) Bk V, 105.

<sup>18</sup>Ibid., 105.

<sup>19</sup>Ibid., Bk IV, 22.

conscript or force the people to fight. As such, “the final declaration of war, or concluding a definitive treaty of peace, would be referred to the whole body” of the people.<sup>20</sup>

The subsequent age of agriculture involved corralling populations within walled conurbations, offering improved defence and the division of land, providing a better food supply and incentives to produce and innovate.<sup>21</sup> The polities based along these lines took different forms. Many seem like straightforward kingships. But, again, Smith claims that what look like early kingships were in essence democracies: “the King, as he was called, was no more than a leading man who had superior influence in their deliberations,” in large measure because final decisions over war and peace continued to rest with the people at large.<sup>22</sup> It was in this period too that some of these kingships were replaced by the first explicitly republican regimes, at first aristocratic and later democratic, some arranged on defensive lines, as in Greece, others for purposes of expansion via conquest, as with Rome.

Rome itself serves as an inflection point in Smith’s conjectural history of the emergence of the federative, and marks a shift to firmer historical sources. Its declension from expansionary republic to what he calls “military monarchy,” in which supreme federative, legislative and judicial power are lodged in the hands of the emperor,<sup>23</sup> and its eventual submission to invading barbarian tribes serve to illustrate how “the fate of a conquering republic was ultimately to conquer itself.”<sup>24</sup> Its collapse set back the civilizational development of Europe considerably, a theme which was repeated in Book III of the *Wealth of Nations* and influenced Edward Gibbon,<sup>25</sup> since the Germanic and other nations that overran Rome, uniformly shepherding peoples, established themselves as a military nobility and reduced the peasants to various degrees of serfdom. However, the demise of Rome also laid the foundations for new, ultimately modern, forms of political organization. In many places, the eventual collapse of feudal government led to power consolidation around the figure of an absolute prince. But some trading towns—remnants, relics almost, of a by that point distant Roman past—were able to exploit the conditions of relative disorder, and the political and moral cupidity of the nobles, to carve out a space for political freedom out of which modern commercial republics could arise. The “federative” republic makes a more contemporary appearance in Smith’s discussion of the relationship that sprang up between the first self-governing Dutch and German towns: “A confederacy or union between these [free towns] together make a *respublica foederata*”; that is, a political association established through the federative or treaty-making capacity of each of its component units. “These are bound to defend, protect, and assist each other, and have a publick revenue. But each of these provinces can make laws, chuse

<sup>20</sup>Ibid., 34.

<sup>21</sup>Ibid., LJ(B) 32–33.

<sup>22</sup>Ibid., LJ(A) Bk IV, 68

<sup>23</sup>Ibid., 105.

<sup>24</sup>Paul Sagar, *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, 2018), 200.

<sup>25</sup>J. G. A. Pocock, *Barbarism and Religion*, vol. 6, *Barbarism: Triumph in the West* (Cambridge, 2015), 368–9.

magistrates, coin money, and even make war by itself provided it be done at its own expense.”<sup>26</sup>

### “The highest exertion of government”: the “senatorial” federative in the emergence of government

Much of Smith’s discussion of the federative occurs in the context of his broad exploration of social and political change, a less than linear story of how societies change across the ages, where the power to make war and peace naturally occupies a central place. There is a perceptible turn towards deeper institutional analysis as Smith starts to trace the rise of modern political structures. Smith highlights the division of labor within the interstices of government, a fundamental feature of modern state-building, and the way those increasingly defined institutions correlate with surrounding sociopolitical structures.

David Lieberman calls Smith’s account of the emergence of the modern European system of public justice and regular government “one of the most original and powerful elements of his historical jurisprudence.”<sup>27</sup> In general terms, that account moves from simplicity to complexity: from the absence of clearly defined separation between institutions to structures which have functional separation between various offices of government as a fundamental principle. As such Smith’s story both of government in general, and of the federative as a particular example, moves from “democracy,” where decisions of war and peace settle diffusely in the people, to greater concentrations of power, whichever governmental form the state took (usually “regular” or moderate monarchy or, less often, commercial republic). Just as Smith thought that “language becomes more simple in its rudiments and principles, just in proportion as it grows more complex in its composition,”<sup>28</sup> there is a sense that the same is true of politics and government: with functional complexity comes foundational clarity. Since the commercial republic represents the most highly developed form of government, and given that Britain supplies the most refined example of that form, it follows that Britain supplied the best exemplar of the principles that constitute a “rational system of liberty” (to which we and Smith return below).<sup>29</sup>

The broad arc of this part of Smith’s account is easy to relate. Rising complexity drives the need for functional specialism within government. In the space occupied by the federative, whereas war and peace were once matters that were “very simply and soon determined,” as the affairs of state multiply it becomes expedient to lodge “the power of providing for the safety of the state and all necessary conveniences” in a small council of state, commonly convened under the aegis of a prince or monarch.<sup>30</sup> While it is socioeconomic and geostrategic forces that do most of the work here, Smith identifies the shift in constitutional theoretical terms as a delegation from “the body

<sup>26</sup>Smith, *Lectures on Jurisprudence*, LJ(A) Bk V, 49.

<sup>27</sup>Lieberman, “Adam Smith on Justice, Rights, and Law,” 232.

<sup>28</sup>Adam Smith, “Considerations Concerning the First Formation of Languages,” in Smith, *Lectures on Rhetoric and Belles Lettres* (1762–3), ed. J. C. Bryce (Indianapolis, 1983), 203–26, at 223.

<sup>29</sup>Smith, *Lectures on Jurisprudence*, LJ(B) 63.

<sup>30</sup>*Ibid.*, LJ(A) Bk IV, 17.

of the people” of “a part of the judicial and executive power, or what we may call the senatorial power.” This structure continues to be mirrored in the pre-imperial Roman practice of returning to the assembled people “in all matters of moment,” when circumstances were particularly dire.<sup>31</sup>

Smith produced several iterations of the evolution of the separation of powers that reflected this functional specialism. The most concise and perhaps most interesting account appears, rather surprisingly, in the *Lectures on Rhetoric and Belles Lettres*, delivered from 1748, with the extant text appearing from 1762–3, making it contemporaneous with the first cycle of his *Lectures on Jurisprudence*. The text offers a truncated version of the thesis in which a more descriptive long-term perspective dovetails with a more normative short-term account. There seem to be four primary phases to the evolutionary story. First, powers are not really distinguishable, and the “duties of Judge, General and Legislator”—the latter existing in particularly rudimentary form—are held by the same persons, usually distinguished by their ability to command armed force. Second, the judicial capacity was the first to emerge as a distinct power, a consequence of the deep-seated need to submit disputes to an impartial person for resolution. Third, initially the position of judge and general tended to coalesce, so that “those who judged [men] in peace lead them also into battle.”<sup>32</sup> But over time warlords were either ill-suited to, or uninspired by, the administration of justice, instead devoting their energies to military exploits, and so ceded this role to another set of magistrates. Fourth and finally, as well as instituting a separation and clarification of judicial and executive functions, that move set in train a process whereby the new class of judicial officers developed a professional structure and systematic procedures within which to exercise their functions.

The legislative function does not feature in this concise treatment, and remains somewhat enigmatic even in longer-form versions. Legislative power is glancingly mentioned in relation to ancient Athens and Rome,<sup>33</sup> but Smith is clear that it otherwise “makes but a very small figure during all this time” because earlier societies had not for the most part developed a habit of obedience to general regulations.<sup>34</sup> Thus legislative power emerges as a property of modernity, certainly as a recognizable and distinct governmental capacity. “Written and formall laws are a very great refinement of government,” Smith writes, “and such as we never meet but in the latest periods of it. It is a sign of great authority in the government to be able to make regulations which shall bind themselves, their posterity, and even persons who are unwilling.”<sup>35</sup>

No doubt it is the increased complexity of modern society that is the primary driver behind this development. But the rise of legislation, which contributes a fifth phase in the evolution of the separation of powers, intersects with, and is even made possible by, the separation and sharpening of judicial power. Smith himself does not quite make this connection, at least not explicitly. A clue that he had something like this in mind lies in his use of the word “formall” as a defining property of legislation. Smith is

<sup>31</sup>Ibid., 34.

<sup>32</sup>Smith, *Lectures on Rhetoric and Belles Lettres*, 199.

<sup>33</sup>Smith, *Lectures on Jurisprudence*, LJ(A) Bk IV, 58, 107.

<sup>34</sup>Ibid., 18, 6.

<sup>35</sup>Ibid., 35.

fascinating on the topic of the longer-term consequences of the professionalization of judicial power. That process was driven by the desire for new judicial officers to increase their legitimacy in the absence of the sort of material clout and charismatic authority of the warlord lawgiver. This sense of exposure led these officials to club together, developing an expanded sense of identity and collegiality that ranged backwards and forwards over time:

These [officers] as the Judicial was their only office would be at much greater pains to gain honour and Reputation by it. Having less power they would be more timid. They would be at pains even to strengthen their conduct by the authority of their predecessors. When therefore there were a few Judges appointed these would be at great pains to vindicate and support their conduct by all possible means. Whatever therefore had been practiced by other judges would obtain authority with them and be received in time as Law.<sup>36</sup>

Note the repetition of the phrase “at great pains,” which occurs three times with minor variation in this short passage, as Smith underscores the innate vulnerability and delicacy of the judicial function as it emerged. In describing the “abstract Reasoning” that inheres in the modern notion of law as an autonomous body of rules and principles,<sup>37</sup> Smith is attempting to capture the rise of what the great early modern judge and jurist Edward Coke called the idea of law as artificial reason, whose meaning is determined by a cadre of trained professionals.<sup>38</sup> The professional elaboration and instantiation of judicial power not only serves to separate the judicial from the executive, but also and more fundamentally clarifies the concept of law itself, now perceptible primarily as a system of rules identifiable by their formal properties. “Laws are in this manner posterior to the establishment of judges,” Smith elaborates. “Were laws to be established in the beginnings of society prior to the judges, they would then be a restraint upon liberty, but when established after them they exten[d] and secure [it] ... In this manner the legislative power is established, which in time, as well as the others, grows up to be absolute.”<sup>39</sup> The judicial emerges as a power to create laws to bind a society and adapt to its development, and the emergence of a judiciary signifies the entrenchment of law itself.

In the final movements in Smith’s stadiac account, the essence of the modern state comes to lie in the operation of a new modality of power through the determination and application of formal rules. Earlier stages of development for the most part lacked the necessary material and mental conditions to sustain such regulative architecture.<sup>40</sup>

<sup>36</sup>Smith, *Lectures on Rhetoric and Belles Lettres*, 174–5 [200].

<sup>37</sup>*Ibid.*, 176 [204].

<sup>38</sup>*Case of Prohibitions* [1607] 77 ER 1342, 1343.

<sup>39</sup>Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 110–11. Haakonssen suggests that Smith’s claim was that “a clear division of power makes it possible for all the actual (and partial) spectators to form a clearer, a *more* impartial judgement about right and wrong in the exercise of power, than they otherwise would.” Knud Haakonssen, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge, 1981), 131, original emphasis.

<sup>40</sup>Smith, *Lectures on Rhetoric and Belles Lettres*, 176 [203]: the separation of powers “has never taken place untill the increase of Refinement and the Growth of Society have multiplied business immensely.”

The rules themselves operate on a different temporal register from simple orders or commands, in that they reach back into the past for legitimacy and project their own efficacy into the future. This system of rules requires distinct institutions to play distinct roles. Specifically, hiving off the judicial function helps fashion a separate executive power and its elaboration creates the conditions for the existence of a separate legislative function, a process for laying down a law, first as a means of correcting persistent errors within the adjudicative structure, later as the primary source of general rules. Indeed, Smith argues that part of the reason for resorting to the legislative function in the first place was to restrain the power of the judges.<sup>41</sup>

### **“A rational system of liberty”: the federative in the British constitution of the 1760s**

Smith took the system of government through rules to be characteristic of both dominant modern political forms in the 1760s: regular monarchy and commercial republic. He thought, however, that only Britain supplied an example of the modern state in its most developed form. Its possession of a constitution that most closely approximated “a rational system of liberty” was down to geography and a contingent and unique history.<sup>42</sup> This process of historical formation had resulted, by Smith’s time, in a structure in which governmental power was more fully than anywhere else—though still incompletely—ordered by rules. “Here”—and only here, Smith wrote—“is a happy mixture of all the different forms of government properly restrained and a perfect security to liberty and property.”<sup>43</sup>

We look at this structure, and the position of the federative within it, with a view to taking Britain as an approximation of Smith’s general ideal rather than analyzing it as a specific constitutional form at a particular evolutionary moment. In general terms, what makes it special is the highly developed functional and institutional separation of powers (“happy mixture”) and the corresponding idea of legality, which Smith regards as pervasive within both the institutional side of public law (“government properly restrained”), where he sees the development of an independent judiciary as central, and its implementation in respect of legal subjects (“a perfect security to liberty and property”), with the writ of habeas corpus being singled out.<sup>44</sup>

An independent judiciary—though a contingent development subject to local conditions, in certain respects<sup>45</sup>—plays an important role through what it guarantees in its own rulings and decisions. The “liberty of the subjects was secured in England,” Smith surmises, “by the great accuracy and precision of the law and decisions given upon it.”<sup>46</sup> But the judicial power so conceived also exerted a radiating effect on the constitution as a whole. We have seen an example of this already in the fashioning

<sup>41</sup>Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 111–2.

<sup>42</sup>*Ibid.*, LJ(B), 63.

<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*, 63–4.

<sup>45</sup>Smith refers to the separation of judicial from the executive/federative as occurring “by chance.” Smith, *Lectures on Rhetoric and Belles Lettres*, 176 [203].

<sup>46</sup>Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 31.

of a distinct (and distinctly modern) legislative power. But Smith has more to say about the dynamics of institutionalization, systematization and juridification that typify the modern state, including as they impinge on the federative. In an important, if enigmatic, passage, Smith tracks the progress of the federative into the modern era, dubbing it the “first part of the supreme power.” To start with, the federative was “altogether precarious.” Its basic democratic form meant that decisions on war and peace were taken by majorities, which might well not be stable given the type of “hot and impetuous” passions that often attend calls to go to war. And there were few effective mechanisms for securing full compliance from minorities who were against war.<sup>47</sup>

But while this “earliest branch of the supreme power is therefore at first exercised precariously,” Smith continues, “now it is altogether absolute.”<sup>48</sup> It is clear from the context that “absolute” does not mean held without limit, but rather something more akin to self-evident and undeniable. What Smith seems to have in mind is a mutually reinforcing structure in which the now functionally and institutionally separate elements of what he calls “the supreme power” coordinate to ensure compliance. Whereas, in their early or original form, neither the federative/executive nor the judicial power could reliably secure compliance with the decisions that emerged from their exercise, that situation changes with the arrival of the modern state, in which the deficiencies of one are rectified by the other. In particular, the embedded nature of judicial power within the modern constitution does not just make the business of securing compliance with judicial verdicts, once extremely fraught, completely routine. It also facilitates the effectiveness of the federative so that, for instance, any individual “who continues the war after the nation[s] have made peace is liable to be punished not only by the country against whom the injury is committed but also by the laws of his own country.”<sup>49</sup> The judicial power thus secures the concentration of the federative within the institutions of government.

The British constitution provides a concrete example of this model of government. While a key to its success may lie in the separation (“by chance”) of the administration of justice from the “conducting of publick affairs [executive] and leading armies [federative],”<sup>50</sup> Smith endeavors to show the constitution as a complex whole made up of a number of moving parts. We do not need to go into great detail here, but it is important to appreciate how Smith understands the modern federative as being encased within an interlacing network of rules establishing the authority of various offices and patterning the interaction between them. Unlike in most other regime types, the British constitution functions on the same logic as earlier republics in that the principle of authority attaches “to offices,” not to individuals.<sup>51</sup>

<sup>47</sup> *Ibid.*, 04–5.

<sup>48</sup> *Ibid.*, 105.

<sup>49</sup> *Ibid.*, 105.

<sup>50</sup> Smith, *Lectures on Rhetoric and Belles Lettres*, 176 [203].

<sup>51</sup> Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 122. On office in this tradition and its relation to authority and jurisdiction see especially Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Abingdon and New York, 2012), Ch. 2.

Smith claims that institutionally divided power, as it operates within the British constitution, clarifies the location of authority, in turn facilitating the effective operation of public power. Two organizing principles predominate within this structure: first, the principle that each of the primary institutions is sovereign (“absolute”) in respect of their province or their own sphere of activity; second, the principle that the exercise of power by those institutions is subject to checks and controls, including from the other primary institutions, which stop short of curtailing their sovereign capacity but are sufficient to prevent maladministration and injustice. The combined operation of these principles ensures that those “persons who are entrusted with the severall parts of the supreme power in the constitution” may “be relied on without hesitation” and so makes their authority “incontestable.”<sup>52</sup>

Those principles operate also in relation to the federative power. On the one hand, as Smith’s general theory anticipates, the formal position has become clearer with the rise of constitutional modernity. The federative power, as we have seen, is said to have become “altogether absolute” in the modern era. While the monarch has lost “almost the whole” of the legislative power to Parliament, the constitution continues to allocate the king “indeed the whole of executive or federative power,” and this arrangement entails that “the king and his ministers have the disposall of peace and war in all ordinary cases.”<sup>53</sup> On the other hand, a number of political constitutional institutions condition the exercise of this “absolute” power. The combined effect of these institutions is to make it more likely that the executive will secure the consent of the other branches and the people as a whole, limiting the likelihood of it doing anything too rash or imprudent.

Smith mentions in this regard Parliament’s power to impeach ministers, though he notes that this practice had all but fallen almost into desuetude.<sup>54</sup> He also shows how the principle of authority within the British constitution works to limit the unilateral exercise of sovereign capacity. The decision to go to war may be one that only the king and his ministers can take. But subsequent measures, including the raising of manpower for a campaign and the finances to support it, are not within the province of the executive. They can only be accomplished through legal means and these the king does not control, either directly (legislative power) or indirectly (judicial power). Moreover, although the constitution clearly entrusts the federative to the king, the people are not excluded entirely from its exercise. Holding frequent elections further constrains the ability of the Crown to put pressure on people that they are unwilling to bear. And, despite Smith’s resistance to the idea of the origins of government in a voluntary contract,<sup>55</sup> he endorses the Lockean proposition that it is nonetheless “lawfull or allowable

<sup>52</sup>Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 112.

<sup>53</sup>Ibid., 113.

<sup>54</sup>Soon to be resuscitated, briefly but famously, by Edmund Burke in the impeachment of former governor general of Bengal Sir Warren Hastings between 1787 and 1795. See Nicholas Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, MA, 2006).

<sup>55</sup>Smith, *Lectures on Jurisprudence*, LJ(A), Bk V, 114.

to resist the power of the king and Parliament” when they act outside constitutional limits.<sup>56</sup>

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It was with the emergence of this very “resistance” to sovereign overreach and the frame of the “obedience” of subjects—foundational claims to legal authority central to the crises of empire and the American revolution—that Smith in his later works develops what we call the “external” federative.<sup>57</sup> This external federative corresponds to the zone of interaction between the federative capacities of various states and the patterns that emerge within this zone. The move from inside to outside the state has been prefigured in Smith’s own use of the term “federative” to describe not just the power of war and peace within the state but also the form of political association generated by promises of friendship and mutual assistance between semi-autonomous political units (*respublica foederata*) in the Dutch and German republics noted above. Smith’s 1760s lectures gave a stylized story of the federative capacity through various stages of development and transmogrification. The later works, written against the backdrop of a more troubled imperial landscape, concentrate more on contemporary problems, particularly mercantilism in its various forms.<sup>58</sup> In them Smith articulated a federative with more far-reaching imperial–constitutional potentialities, forming a rough guide to how a structure of international justice might materialize.

Given what we have said so far about Smith’s tendency to think in terms of dynamic social systems and structures, we might expect the interpretive task here to be a rather involved one. And so it proves. In searching for Smith’s external federative, we turn first to his critical reflections on contemporary international commercial society, and specifically its structuring constellation of commerce, foreign relations and law, before examining how he imagines those elements might be more benignly arranged. The position he reaches is that imperial structures of domination and exploitation should be supplanted by federative arrangements, the objective being the recognition of independent states entering freely into arrangements of friendship based on cooperation and mutual respect. But even if that situation can be reached, Smith thinks that we should not be too optimistic about securing international justice, especially where substantial imbalances of power subsist. We illustrate and sharpen this analysis by taking a close look at his most developed proposal in this vein: his federative reimagining of the future relationship between Britain and America as a connection of legislatures. One important development that prefigures that is Smith’s expansion of the federative to hold a private, commercial valence, drawn from analogies between sovereigns and commercial colonial companies.

<sup>56</sup>Ibid., LJ(A), Bk V, 114.

<sup>57</sup>Smith here shares the frame of obedience and resistance taken up by Jeremy Bentham in the *Fragment*: anon. [Jeremy Bentham], *A Fragment on Government: Being an Examination of what is Delivered, on the Subject of Government in General, in the Introduction to Sir William Blackstone’s Commentaries: with a Preface, in which is Given a Critique on the Work at Large* (London, 1776). On American tracts on rebellion, obedience and legal authority see e.g. Bernard Bailyn, *The Ideological Origins of the American Revolution* (1967) (Cambridge, MA, 1992), Ch. 4.

<sup>58</sup>See Steve Pincus, “Rethinking Mercantilism: Political Economy, the British Empire, and the Atlantic World in the Seventeenth and Eighteenth Centuries,” *William and Mary Quarterly* 69 (2012), 3–34.

### “Arts of oppression”: privatizing the federative and the injustices of colonial empire

Smith does not use the word “federative” in the 1776 *Wealth of Nations*—though there are occasional references to “confederacy”—preferring the somewhat looser term “executive.” The *Theory of Moral Sentiments*, appearing in six iterations from 1759 to 1790, consistently manages to avoid both “federative” and “executive.” Yet both works offer thick visions of executive power, federative constitutional connections, and the interplay of national and international law, prudence and justice. The best route into Smith’s understanding of the “external” federative starts with his deep and long-standing antipathy towards empire and the nascent international order drawn up along imperial lines.<sup>59</sup> His thesis, on our reading, is that commercial empire is corrupting because it leads to the “privatization” of the federative via the outsourcing of war and peace and of diplomatic and treaty-making powers to monopoly trading companies.

In *The Wealth of Nations*, “the most enduring of all the histories of commerce hatched in the long shadow of the Seven Years’ War,”<sup>60</sup> Smith shows how European colonial rule was detrimental to metropolitan and conquered non-European societies alike.<sup>61</sup> The practice of empire had proved “ruinous and destructive” to native societies because of the “savage injustice of the Europeans” and their use of “exclusive” trading companies for long-distance trade.<sup>62</sup> Systems of colonial rule were “perfectly destructive,” as subjects labored under the “strange absurdity” of extractive private trading companies acting the part of sovereign.<sup>63</sup> While his sharpest invective may have been reserved for these “arts of oppression,” Smith devoted more space to his analysis of the political economy of empire, a central feature of which was to counter the widespread assumption that the wealth generated by colonial rule was to the benefit (as well as glory) of the imperial state. Smith argued instead that monopoly trade brought advantage only to a small elite at everybody else’s expense, with the people as a whole left ultimately with the burden of public debt.<sup>64</sup> The costs were not just monetary. Smith was sensitive to the ways colonial expansion could damage the body politic, observing how Britain had begun to resemble a body disfigured by a massive tumor, where a block in circulation might rupture it at any moment.<sup>65</sup>

The injustice of empire was partly a function of the limits and failures of international law and the constitutional arrangements of states. The law of nations was clearly

<sup>59</sup> See further Donald Winch, “Adam Smith’s *Politique Coloniale*,” *Cahiers d’économie politique* 27 (1996), 39–55.

<sup>60</sup> David Armitage, *Foundations of Modern International Thought* (Cambridge, 2013), 55.

<sup>61</sup> Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, 2005), 52.

<sup>62</sup> Smith, *Wealth of Nations*, Bk IV, Ch. 1, 32.

<sup>63</sup> *Ibid.*, Ch. 7, Part III, 103. On Smith’s ambivalent critique of colonial empire, and his endorsement of non-slaveholding and non-monopolistic empires, see Onur Ulas Ince, “Adam Smith, Settler Colonialism, and Limits of Liberal Anti-imperialism,” *Journal of Politics* 83 (2021) 1080–96.

<sup>64</sup> Assuming they could do so. David Hume had famously argued that, such was the debt accrued in colonial adventuring and the military efforts needed to sustain it, this was how the state itself was likely to die. David Hume, “Of Public Credit,” in Hume, *Essays, Moral, Political, and Literary*, ed. Tom L. Beauchamp and Mark A. Box (Oxford, 2022).

<sup>65</sup> Smith, *Wealth of Nations*, Bk IV, Ch. 7, Part III, 43.

a part of the field Smith critiqued, and he was frequently scathing about it. “The partial spectator is at hand: the impartial one at a great distance,” Smith wrote in the *Theory of Moral Sentiments*. “In war and negotiation, therefore, the laws of justice are very seldom observed. Truth and fair dealing are almost totally disregarded. Treaties are violated; and the violation, if some advantage is gained by it, sheds scarce any dishonour upon the violator.”<sup>66</sup> Distance in commerce might facilitate self-command and moral development, especially in considering and encountering strangers,<sup>67</sup> but this would need to take place before it could be solidified in a system of international law. Even so, Smith is best read as a moderate sceptic about international law. He presents what is ultimately a nuanced position in which, to be remotely effective, the law of nations must be grounded in an international system subject to different operating principles and, even then, prudence and statesmanship will do more work than the interpretation and application of law to bring about international justice.

The difficulties of realizing genuine international justice are perhaps clearest in Smith’s treatment of the “privatization” of the federative in situations where it is delegated to trading companies operating overseas. This private federative is a central feature of Smith’s critique of commercial empire and reinforces his wider critique of the conflict of private interest and public power. In discussing the sovereign’s duty of establishing the conditions for commercial society, Smith moved from their internal operation within Great Britain to imperial forms of commerce.<sup>68</sup> Smith provides a close analysis of how foreign trade is supported through, for instance, establishing the corporate identity of major trading companies and authorizing their trade, building fortifications to protect merchants in “barbarous and uncivilized nations,”<sup>69</sup> and sending embassies to facilitate commercial expansion.<sup>70</sup> Such activities are explicitly linked to the federative: “the right of possessing forts and garrisons, in distant and barbarous countries, is necessarily connected [to] the right of making peace and war in those countries.”<sup>71</sup> In many instances, though, the right is not engaged by the sovereign or people, but delegated to private trading companies, who exercise it “unjustly ... capriciously ... cruelly.”<sup>72</sup> The federative is almost inevitably corrupted when used for private, extractive ends. Conversely, it is the imprimatur of the state, or of proper state supervision, that ensures that it is directed for public goods.

### “To promote, instead of obstructing”: federative sentiments

A more positive vision of the external federative emerges from this critique of commerce. If it can escape the shadow of empire, the federative offers an alternative paradigm through which public power and popular sentiments may be reorganized,

<sup>66</sup>Smith, *Theory of Moral Sentiments*, Bk III, Ch. 3, 42.

<sup>67</sup>Maria Pia Paganelli, “The Moralizing Role of Distance in Adam Smith: *The Theory of Moral Sentiments* as Possible Praise of Commerce,” *History of Political Economy* 42 (2010), 425–41.

<sup>68</sup>Smith, *Wealth of Nations*, Bk V, Ch. 1, Part II, 724–31.

<sup>69</sup>*Ibid.*, V, 2, 4.

<sup>70</sup>*Ibid.*, 4–28.

<sup>71</sup>*Ibid.*, 29.

<sup>72</sup>*Ibid.*, 30.

both within and beyond the state, so as to correct the excess and injustice of commercial empire. The same constellation of basic imperial elements—commerce, foreign relations, law, prudence—can be remixed, Smith thinks, to produce more reasonable relations between nations that, over time, may provide the foundation of a new international order more closely aligned with principles of justice. In outlining Smith's position, however, we face two difficulties. First, while his body of work offers more than traces of what he intended on this front, these fall short of a clear and systematic normative treatment of the subject. Second, even in the more constructive aspects of his project, Smith remains acutely aware of potential sources of fragility and disruption within the frameworks he discusses, even where he thinks they are more likely than not to lean towards justice.

Smith seeks a system of international commercial society that avoids its current dysfunctions, especially the unstable competitiveness that made war more likely and colonial domination almost certain. To move beyond that current state of affairs required policy to be oriented consistently towards the true public interest. But to get to that point necessitates as much a change in societal attitudes as the rationalization of institutional architecture. The trick is to inculcate within political debate what we call here “federative sentiments.” People must learn to see modern warfare for the debilitatingly costly enterprise that it was.<sup>73</sup> Smith consistently opposed the glorification of nations, as Samuel Fleischacker notes, maintaining that true love of country has nothing to do with glory vis-à-vis other nations but “consists instead in love for the laws and institutions that preserve peace and promote the well-being of one's fellow citizens. This kind of love of country is not in principle, and only rarely in practice, in conflict with love of mankind in general.”<sup>74</sup> But that sentiment remained, then as now, rare; a kind of paranoid nationalism was the norm, and Smith spends considerable time exploring and critiquing this misguided nationalist sentiment.

In the face of this rank patriotism, what is most conducive to peace is for nations and their citizens to see the collective benefit to be derived from each other's prosperity and stability. Each nation must realize that it is in their own interest not to disturb the conditions on which these benefits rest. Linking distance and justice, Smith recognizes how our “love of nation” places geographical limits on our sympathy for and love of humanity. Consequently he grounds his call for every nation “to promote, instead of obstructing, the excellence of its neighbours” on arguments of self-interest rather than out of “the love of mankind.”<sup>75</sup> Fonna Forman-Barzilai styles the position that emerges “self-centred cosmopolitanism” because it seeks to harness the enlightened self-interest of nations to a framework of free commercial intercourse that “promised

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<sup>73</sup>See Nicholas Phillipson, *Adam Smith: An Enlightened Life* (London, 2010), 232: “The real problem was the cost of defence. This was bound to be a charge on the taxpayer, would be heaviest in technologically advanced societies, and could all too easily become ruinous in an age of incessant warfare. Smith's fears of the costs of modern warfare pervade the entire discussion of governance.”

<sup>74</sup>Samuel Fleischacker, *On Adam Smith's Wealth of Nations* (Princeton, 2005), 251.

<sup>75</sup>Smith, *Theory of Moral Sentiments*, Bk VI, Part II, Ch. 2, 3.

to mitigate conflict among spatially disparate entities, and to generate a tolerable peace in the absence of better motives.”<sup>76</sup>

One consequence of this project of self-centred cosmopolitanism is that much of the heavy lifting would have to be done inside the state apparatus. We have already seen Smith’s outline of a constitutional model conducive to sustaining policy making in the public interest, the idea being that the modern separation of powers inclines towards rationalization within law and government and, in so doing, opens up a space in which it makes sense to think in terms of the operation and realization of the “public interest” properly understood.<sup>77</sup> The only potential check on that nationalist sentiment is a constitutional order that guides individuals towards respect, obedience and mutual welfare, both within the nation and potentially between them.

To this end, the final 1790 edition of *Theory of Moral Sentiments* included a new sixth part that significantly expanded Smith’s account of international sentiment and connected it to constitutional ordering as the basis for a system of practical morality. As in the 1760s *Lectures on Jurisprudence*, Smith in the 1790 *Theory of Moral Sentiments* sees constitutions as functioning like competing “orders and societies,” akin to classes, within states, with each holding their “particular powers, privileges, and immunities,” and, as within families, expressing the closest connections to others of that order.<sup>78</sup> Any idealist attempt, either from citizens or from the sovereign, to impose an ideal scheme on the polity by reorganizing the classes—usually motivated by the “love of humanity”—will rarely succeed.<sup>79</sup> Constitutions are the accretion of customs and sentiments, which those seeking to reform must gradually change over time.<sup>80</sup> The 1790 *Theory of Moral Sentiments* contains an intriguing afterword to this “sentimental” method, the intuition being that a properly directed comparative constitutional-law inquiry ought to yield principles capable of recalibrating the international legal order. Domestic constitutions had the “greatest authority,” Smith argued in Montesquieuan vein, “as the records of the sentiments of mankind in different ages and nations.” The way those national legal systems have been sharpened through the “reasonings of lawyers” should be capable of disclosing a “theory of general principles which ought to run through and be the foundations of the laws of all nations.”<sup>81</sup>

Such an account of federative sentiments could provide a means to counteract the imperial sentiments that stymie international justice. In one sense, Smith’s objective

<sup>76</sup>Forman-Barzilai, *Adam Smith and the Circles of Sympathy*, 198.

<sup>77</sup>Even within the interstices of national political orders, Smith is realistic about the prospects of improvement: “To expect, indeed, that the freedom of trade should ever be entirely restored to Great Britain, is as absurd as to expect that an Oceana or Utopia should ever be established in it. Not only the prejudices of the publick, but what is much more unconquerable, the private interest of many individuals, irresistibly oppose it.” Smith, *Wealth of Nations*, Bk IV, Ch. 2, s 43.

<sup>78</sup>Smith, *Theory of Moral Sentiments*, Bk VI, Part II, Ch. 2, s 7.

<sup>79</sup>This critique seems to have the American, and more recently French, revolutions in its sights. On Smith’s reception among French readers and revolutionaries, and their use of his texts to support constitutional and class changes, see Ruth Scurr, “Inequality and Political Stability from Ancien Régime to Revolution: The Reception of Adam Smith’s *Theory of Moral Sentiments* in France,” *History of European Ideas* 35 (2009), 441–9.

<sup>80</sup>Smith, *Theory of Moral Sentiments*, Bk VI, Part II, Ch. 2, ss 8–18.

<sup>81</sup>*Ibid.*, Part IV, ss 36–7.

here can be read as a kind of renewal of the “democratical” origins of the power as described in the *Lectures on Jurisprudence*: returning responsibility for the foreign actions of a state back to the people who are enacting them, for better or worse. Within the modern state, the most productive direction for that project is for states and state leaders to act prudently to reorganize the current internal structures and conceptions of empire. In reaching outwards to other nations, Smith anticipated a “very limited role for the application of ... pure reason in international affairs.”<sup>82</sup> Nations needed to adopt the injunction against destabilizing other nations through aggressive or otherwise improper action. As a general maxim, we would expect that injunction to function as a more or less consistent, if sometimes recessed, steer on public policy. But the application of that maxim outside the state will always be responsive to real-world conditions and calculations of the national interest as understood by the dictates of prudence.

By prudence, Smith simply means qualities of “superior reason and understanding” that enable us to discern “the remote consequences of all our actions” and the costs and benefits likely to result from them.<sup>83</sup> The foreign-relations maxim and prudence, so understood, will often pull in the same direction. It will not always be advisable to instigate peaceful relations with another nation, for instance where its actions have disclosed reasons not to trust it. But the prudent statesman should operate in ways that are likely to improve the long-term interests of the nation, which, as Smith has shown, will more often than not lean in the direction of establishing “bond[s] of union and friendship” between nations.<sup>84</sup> As Smith composed the *Wealth of Nations*, the primary contemporary example of fractious relations that demand a prudential solution was Britain’s relations with the American colonies and its wider commercial and military empire. Smith’s solution is a properly federative union between them, as a first step towards a properly federative international order.

### “Antient affections”: Smith’s federative proposal for America

In his works of the late 1770s, Smith articulates the true federative international order as the connection of legislatures, rather than of diplomats or sovereigns. The federative here is now less a question of private commercial operations, or sovereign prerogative, or even sovereign power subjected to democratic oversight, but rather a marker of institutional connections between colonial and imperial parliaments, and from there potentially legislatures the world over. The federative can bind otherwise largely independent colonies and states that share commercial, cosmopolitan and familial connections, to distribute sovereignty and monitor its exercise through a combined

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<sup>82</sup>Andrew Wyatt-Walter, “Adam Smith and the Liberal Tradition of International Relations,” *Review of International Studies* 22 (1996), 5–28, at 24.

<sup>83</sup>Smith, *Theory of Moral Sentiments*, Bk IV, Part II, Ch. 2, 6. Actually, Smith argues that the “virtue of prudence” consists in the “union” of the two qualities of “superior reason and understanding” and “self-command” (i.e. the ability to sustain long-term self-interest through shorter-term distractions). It seems to us that the second of these qualities is subsumed within the first.

<sup>84</sup>Smith, *Wealth of Nations*, Bk IV, Part III, Ch. 3, 9.

parliament. Echoing his critique of the corruption of privatized federative power, Smith sees legislative supervision as necessary for the proper exercise of the federative.

The first such proposal appears in Book IV of the *Wealth of Nations*. Discussing Britain's increasingly fractious legal and political relationship with the American colonies, Smith proposes a treaty-based union to prevent hostilities arising between them. As Eric Nelson and William Selinger have recently emphasized, such proposals were commonplace within the increasingly fractious climate of the 1760s and 1770s, with leading American colonists, such as James Wilson, Benjamin Franklin, Alexander Hamilton and John Adams, pressing the case for the American colonial assemblies to be raised to an equal footing with the House of Commons, the result of which would have been an empire with a single independent monarch but multiple legislatures.<sup>85</sup> The starting point for Smith's version of the argument is the position of the colonial assemblies, which, he observes, have complete power to manage their own affairs except in regard to foreign trade and foreign affairs. As such, though colonial assemblies may be said to represent their people and "claim the sole right of imposing taxes" for the colony, they lack federative power and thus true executive capacity.<sup>86</sup>

Smith in fact offers two federative solutions to this predicament, again framed in the language of sentiment. The best solution would be to relinquish sovereignty, leaving the colonists free "to elect their own magistrates, to enact their own laws, and to make peace and war as they might think proper," and to create a loose alliance with the newly independent American colonies. "By thus parting good friends," via the establishment of a treaty of commerce, the "late dissensions" will be extinguished, allowing "the natural affection of the colonies to the mother country" to be channelled in the direction of stability and peace, and turning what were once "turbulent and factious subjects" into "our most faithful, affectionate, and generous allies."<sup>87</sup>

But Smith knows that such a course of action is unlikely in the extreme: "No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might be to govern it."<sup>88</sup> As such, he offers a (slightly) more realistic alternative. Drawing inspiration from the expansion of the Roman Republic, Smith suggests that the two main options in the scenario are either social war—conquest "by force alone"—or "confederacy" in a federative union in which full rights of citizenship are extended to all.<sup>89</sup> Whereas the Roman Republic's incorporation of the Italian peoples that supplies Smith's main example "completely ruined" the republic, since no one could now identify a genuine Roman,<sup>90</sup> the same does not hold true of the American case. The procedures of the House of Commons could be easily adjusted to admit new representatives from the American colonies. Far from weakening the British constitution, the inclusion of colonial representatives could even be said to complete it. A

<sup>85</sup>William Selinger, *Parliamentarism from Burke to Weber* (Cambridge, 2019), 35; Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA, 2014), Ch. 2.

<sup>86</sup>Smith, *Wealth of Nations*, Bk IV, Part VII, Ch. 2, 49.

<sup>87</sup>*Ibid.*, Ch. 3, 66.

<sup>88</sup>*Ibid.*, 76.

<sup>89</sup>*Ibid.*, 75.

<sup>90</sup>*Ibid.*, 77.

“properly informed” Anglo-American federative–imperial assembly that “deliberates and decides concerning the affairs of every part of the empire” necessarily requires representatives to be drawn “from every part of it.”<sup>91</sup>

Smith concedes that establishing such a federative union would be difficult. But the objections stem not, he thinks, from the nature of the proposal, but rather from the “prejudices and opinions” of both American and British subjects—put differently, a lack of federative sentiments.<sup>92</sup> Smith has rebuttals to the objections of both. British concerns that American representatives might “overturn the balance of the constitution” between Crown power and democratic representation could be solved by making American representation proportionate to American taxation: “The monarchical and democratical parts of the constitution would, after the union, stand exactly in the same degree of relative force with regard to one another as they had done before.”<sup>93</sup> American concerns that their geographical distance from parliament might lead to oppression would be counterbalanced by representatives knowing that their seats depended on ensuring the good treatment of citizen constituents and thus acting as the conduit for complaints of imperial misconduct.<sup>94</sup> Smith also makes a broader point about the political economy of empire. Any residual concerns about American representation are likely soon to be superseded because America’s rapid progress means its “produce” will outstrip “British taxation,” leading it to take Britain’s place as the main “seat of the empire.”<sup>95</sup>

Federative thinking also plays a part in Smith’s discussion of the specific injury that the spread of mercantile empire had wrought on Indigenous peoples. Here too he lays out a possible future where justice and respect might prevail between all nations and peoples. But the way he does so in this context tells us something about the structural and material conditions of meaningful federative arrangements. Smith writes that it is one thing to decry the “misfortunes” of native peoples, but making international justice real requires the threat of force on the part of the latter and most likely a different balance of power between colonizer and colonized: “the natives of those countries may grow stronger, or those of Europe may grow weaker, and the inhabitants of all the different quarters of the world may arrive at that equality of courage and force which, by inspiring mutual fear, can alone overawe the injustice of independent nations into some sort of respect for the rights of one another.”<sup>96</sup> The general point, which arises equally from the distant prospects for remedying the predicament of native peoples and the more achievable plan for Anglo-American confederation, is that there must be at least a perception that force and production are more or less balanced to make a union of interests and legal powers, and thus respect for rights, actually possible.

Smith’s plan for a federative–imperial union finds its clearest expression in one of his last works on the American crisis. In “Thoughts on the State of the Contest

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<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, 78.

<sup>94</sup> *Ibid.*, 79.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, 80.

with America, February 1778,” sent to his long-time friend Alexander Wedderburn, the Scottish lawyer and solicitor general at the time, Smith outlined four ways to resolve the colonial war in America: complete submission of America to Britain by conquest or treaty, complete emancipation from Britain and removal of its “supremacy,” restoring the “old system” of colonial relations where Britain appointed high offices and set “certain regulations of trade,” and partial independence of some colonies.<sup>97</sup>

Dismissing the viability of military government or a return to the *status quo ante*, Smith once again concentrates on the two possible federative solutions, which he now calls “constitutional union” (i.e. complete submission by treaty) and “federal union,” by which he means not federal in the sense it is now used but “federative,” which is to say the complete emancipation of the American colonies but with ongoing ties of alliance secured by treaty. The relative plausibility of these two solutions has now been reversed, presumably in light of changed conditions on the ground. The plan for constitutional union, though it “would certainly tend most to the prosperity, to the splendour, and to the duration of empire,” seems to find no support anywhere, and certainly not among the colonists: “In their present elevation of spirits, the ulcerated minds of the Americans are not likely to consent to any union even upon terms the most advantageous to themselves.”<sup>98</sup>

That leaves “federal union” as the only viable option. The Americans clearly want emancipation. From the British standpoint, the chief benefit of the arrangement would be a substantial saving in the costs of defending the American colonies from European powers. Smith drew a parallel with George III’s Hanoverian connections that had embroiled Britain in European quarrels. Just as the British people wished for Hanover to be “separated” from the British Crown, so “it ought to be much more their wish now that America should be so.”<sup>99</sup> Smith also suggested returning Canada to France and Florida to Spain, leaving the newly independent Americans natural enemies of those two powers, “and consequently the natural allies of Great Britain,” reviving “old enmities and probably old friendships” in so doing. In case this continental balance of power were to fail, the connection of “language and manners” should be enough to lead the Americans to “prefer our alliance to that of any other nation.”<sup>100</sup>

But that “antient affection” would only be “revive[d]” if the Americans were reassured that Britain “meant to claim no dominion over them.” This would require a peace agreement guaranteeing full independence and recognizing in return only the restitution of the property of local aristocrats sympathetic to the British cause,<sup>101</sup> presumably to be supplemented with the more substantial treaty of commerce envisaged in the parallel sections of the *Wealth of Nations*. This scenario would doubtless lessen Britain’s imperial honor “in the eyes of Europe” as well as diminishing it, more seriously, among the British, who would blame poor administration for “dismembering

<sup>97</sup> Adam Smith, “Smith’s Thoughts on the State of the Contest with America, February 1778,” ed. D Stevens, in *The Correspondence of Adam Smith* (Indianapolis, 1987), 377–85, at 377, 380.

<sup>98</sup> *Ibid.*, 381–2.

<sup>99</sup> *Ibid.*, 382.

<sup>100</sup> *Ibid.*, 383.

<sup>101</sup> *Ibid.*

the empire.” Even so, the prospect of a federal union ought to be preferred, since it would “certainly incur much less expense, and might, at the same time, gain as real advantages, as any we have hitherto derived from all the nominal dominion we have ever exercised over them.”<sup>102</sup>

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In one sense, Smith’s final use of the federative to articulate a treaty-based union between Britain and America involves the dissolution of empire, its “dismemberment” by the expansion of parliamentary representation. The contours of Smith’s external federative in *Wealth of Nations* and “Thoughts on America” is best understood through sentiment—publics imagined or expected in Britain and America, “prejudices and opinions,” their “elevation of spirits”—usually in the form of expected opposition.<sup>103</sup> This connects back to Smith’s original insistence in the *Lectures on Jurisprudence* that the internal federative power exercised by the monarch, emperor or senate is always still referable ultimately to the people: an essentially “democraticall” power that is gradually expressed through more complex systems of government, first within one state, then capable of bridging two, then remedying the problems of empire, and from there to extend law and justice through the world as a whole. It also fits with Smith’s consistently guarded pessimism about the possibilities and modes of achieving some form of real international justice between nations, and his constant attention to the balances of power and material forces as presently precluding that from being achieved. Smith’s federative, in both its internal and external forms, operates to express the connections in the will of the people, both as collective, class orders and as individuals, quelling (perhaps ambivalently) the excesses of nationalism and monopoly capitalism, connecting imperial rivals, and offering a potential, fragile path toward wider international peace.

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<sup>102</sup>Ibid.

<sup>103</sup>Smith, *Wealth of Nations*, Bk IV, Part VII, Ch. 3, 77; Smith, “Smith’s Thoughts,” 381.